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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SHERRY MORENO, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

SUNRUN, INC., a Delaware
corporation,

Defendant.

Case No. 3:21-cv-03306

CLASS ACTION

**COMPLAINT FOR
VIOLATIONS OF THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. §§
227, ET SEQ. (TCPA)**

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Sherry Moreno brings this action against Defendant Sunrun, Inc., and alleges as follows upon personal knowledge as to Plaintiff and Plaintiff's own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff's attorneys.

NATURE OF THE ACTION

1. This is a putative class action under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, ("TCPA"), and its implementing regulations.

2. Defendant is a solar company that markets and installs solar panel systems in numerous states throughout the nation.

3. To promote its services and solicit new clients, Defendant engages in telemarketing utilizing prerecorded voice calls without the proper consent and even after recipients request to no longer receive calls.

4. Through this action, Plaintiff seeks injunctive relief to halt Defendant's unlawful conduct which has resulted in the invasion of privacy, harassment, aggravation, and disruption of the daily life of thousands of individuals. Plaintiff also seeks statutory damages on behalf of themselves and the members of the class, and any other available legal or equitable remedies.

JURISDICTION AND VENUE

5. Jurisdiction is proper under 28 U.S.C. § 1331 as Plaintiff alleges violations of a federal statute.

1 telephone technology—for example, computerized calls dispatched to private
2 homes—prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*,
3 132 S. Ct. 740, 744 (2012).

4
5 13. In an action under the TCPA, a plaintiff must only show that the
6 defendant “called a number assigned to a cellular telephone service using an
7 automatic dialing system or prerecorded voice.” *Breslow v. Wells Fargo Bank, N.A.*,
8 857 F. Supp. 2d 1316, 1319 (S.D. Fla. 2012), *aff’d*, 755 F.3d 1265 (11th Cir. 2014).

9
10 14. The Federal Communications Commission (“FCC”) is empowered to
11 issue rules and regulations implementing the TCPA. According to the FCC’s
12 findings, calls in violation of the TCPA are prohibited because, as Congress found,
13 automated or prerecorded telephone calls are a greater nuisance and invasion of
14 privacy than live solicitation calls, and such calls can be costly and inconvenient.
15 The FCC also recognized that wireless customers are charged for incoming calls
16 whether they pay in advance or after the minutes are used. *Rules and Regulations*
17 *Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-
18 278, Report and Order, 18 FCC Rcd 14014 (2003).

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22 15. In 2012, the FCC issued an order tightening the restrictions for
23 automated telemarketing calls, requiring “prior express written consent” for such
24 calls to wireless numbers. *See In the Matter of Rules & Regulations Implementing*
25 *the Tel. Consumer Prot. Act of 1991*, 27 F.C.C.R. 1830, 1838 ¶ 20 (Feb. 15, 2012)
26 (emphasis supplied).
27
28

1 16. To obtain express written consent for telemarketing calls, a defendant
2 must establish that it secured the plaintiff's signature in a form that gives the plaintiff
3 a "clear and conspicuous disclosure" of the consequences of providing the requested
4 consent....and having received this information, agrees unambiguously to receive
5 such calls at a telephone number the [plaintiff] designates." *In re Rules &*
6 *Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C.R. 1830,
7 1837 ¶ 18, 1838 ¶ 20, 1844 ¶ 33, 1857 ¶ 66, 1858 ¶ 71 (F.C.C. Feb. 15, 2012).
8
9

10 17. The TCPA regulations promulgated by the FCC define "telemarketing"
11 as "the initiation of a telephone call or message for the purpose of encouraging the
12 purchase or rental of, or investment in, property, goods, or services." 47 C.F.R. §
13 64.1200(f)(12). In determining whether a communication constitutes telemarketing,
14 a court must evaluate the ultimate purpose of the communication. *See Golan v.*
15 *Veritas Entm't, LLC*, 788 F.3d 814, 820 (8th Cir. 2015).
16
17

18 18. "Neither the TCPA nor its implementing regulations 'require an
19 explicit mention of a good, product, or service' where the implication of an improper
20 purpose is 'clear from the context.'" *Id.* (citing *Chesbro v. Best Buy Stores, L.P.*,
21 705 F.3d 913, 918 (9th Cir. 2012)).
22

23 19. "'Telemarketing' occurs when the context of a call indicates that it was
24 initiated and transmitted to a person for the purpose of promoting property, goods,
25 or services." *Golan*, 788 F.3d at 820 (citing 47 C.F.R. § 64.1200(a)(2)(iii); 47 C.F.R.
26 § 64.1200(f)(12); *In re Rules and Regulations Implementing the Telephone*
27
28

1 *Consumer Protection Act of 1991*, 18 F.C.C. Rcd at 14098 ¶ 141, 2003 WL
2 21517853, at *49).

3 20. The FCC has explained that calls motivated in part by the intent to sell
4 property, goods, or services are considered telemarketing under the TCPA. *See In*
5 *re Rules and Regulations Implementing the Telephone Consumer Protection Act of*
6 *1991*, 18 FCC Rcd. 14014, ¶¶ 139-142 (2003). This is true whether call recipients
7 are encouraged to purchase, rent, or invest in property, goods, or services during the
8 call *or in the future. Id.*

9 21. In other words, offers “that are part of an overall marketing campaign
10 to sell property, goods, or services constitute” telemarketing under the TCPA. *See*
11 *In re Rules and Regulations Implementing the Telephone Consumer Protection Act*
12 *of 1991*, 18 FCC Rcd. 14014, ¶ 136 (2003).

13 22. If a call is not deemed telemarketing, a defendant must nevertheless
14 demonstrate that it obtained the plaintiff’s prior express consent. *See In the Matter*
15 *of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 FCC
16 Rcd. 7961, 7991-92 (2015) (requiring express consent “for non-telemarketing and
17 non-advertising calls”).

23 FACTS

24 23. Beginning in July 2019, Defendant, or parties under Defendant’s
25 direction, began causing calls using prerecorded or artificial voices to be transmitted
26 to Plaintiff’s cellular telephone number ending in 6589 (the “6589 Number”).
27
28

1 24. After the calls began, Plaintiff made multiple requests to Defendant's
2 employees to stop contacting her at the 6589 Number.

3 25. Despite this, Defendant ignored Plaintiff's requests and continued
4 calling the 6589 Number.
5

6 26. This failure to stop calling is indicative of Defendant's failure to
7 implement a written policy for maintaining a do-not-call list and to train its personnel
8 engaged in telemarketing on the existence and use of the do-not-call-list.
9

10 27. Defendant has transmitted prerecorded or artificial voice messages to
11 the 6589 Number as recently as January 2021.
12

13 28. Defendant's unsolicited communications, as described herein,
14 constitute telemarketing or solicitations because they encourage the future purchase
15 or investment in property, goods, or services. Specifically, the purpose of the calls
16 was to promote Defendant's solar energy equipment and services.
17

18 29. Additionally, the prerecorded messages sent to Plaintiff failed to
19 provide an automated, interactive voice- and/or key press-activated opt-out
20 mechanism for the called person to make a do-not-call request, including brief
21 explanatory instructions on how to use such mechanism. This caused harm to
22 Plaintiff in that she was unable to stop Defendant's prerecorded solicitations.
23
24

25 30. At no point in time did Plaintiff provide Defendant with her express
26 written consent to be contacted on the 6589 Number with a telemarketing call
27 utilizing a prerecorded or artificial voice.
28

1 31. Upon information and belief, Defendant caused other prerecorded
2 telemarketing messages to be sent to individuals.

3 32. At the time Plaintiff received these calls, she was the subscriber and/or
4 sole user of the 6589 Number.
5

6 33. The 6589 Number is Plaintiff's personal cell phone number and not a
7 business phone number.
8

9 34. The 6589 Number has been registered with the National Do Not Call
10 Registry since October 2019.

11 35. Defendant's unsolicited calls caused Plaintiff harm, including invasion
12 of privacy, aggravation, annoyance, intrusion on seclusion, trespass, and conversion.
13 Defendant's call also inconvenienced Plaintiff and caused disruption to their daily
14 life.
15

16
17 **CLASS ALLEGATIONS**

18 **PROPOSED CLASSES**

19 36. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23,
20 on behalf of themselves and all others similarly situated.
21

22 37. Plaintiff brings this case on behalf of the following classes:
23

24 **Prerecorded Message Class:** All persons within the
25 United States who, within the four years prior to the filing
26 of this Complaint, were sent a call using an artificial or
27 prerecorded voice, regarding Defendant's property, goods,
28

1 and/or services, from Defendant or anyone on Defendant's
2 behalf, to said person's telephone number.

3
4 **Do Not Call Class:** All persons in the United States who
5 from four **years** prior to the filing of this action: (1) were
6 sent a phone call by or on behalf of Defendant; (2) more
7 than one time within any 12-month period; (3) where the
8 person's telephone number had been listed on the National
9 Do Not Call Registry for at least thirty days; (4) for the
10 purpose of advertising, promoting, and/or soliciting
11 Defendant's products and services.

12
13
14
15 **Internal Do Not Call Class:** All persons within the
16 United States who, within the four years prior to the filing
17 of this Complaint, (1) were sent a prerecorded call from
18 Defendant or anyone on Defendant's behalf, (2) regarding
19 Defendant's property, goods, and/or services, (3) to said
20 person's residential telephone number, (4) after making a
21 request to Defendant to not receive future calls.

22
23
24
25 **No Opt-Out Class:** All persons in the United States who
26 from four years prior to the filing of this action (1) to
27 whom Defendant placed one or more calls, (2) regarding
28

1 Defendant's property, goods, and/or services, (3) by using
2 an artificial or prerecorded voice telephone message, (4)
3 which did not provide an automated, interactive voice-
4 and/or key press-activated opt-out mechanism for the
5 called person to make a do-not-call request.
6

7 38. Plaintiff reserves the right to modify the Class definitions as warranted
8 as facts are learned in further investigation and discovery.
9

10 39. Defendant and its employees or agents are excluded from the Classes.
11 Plaintiff does not know the number of members in the Classes, but believes the Class
12 members number in the several thousands, if not more.
13

14 **NUMEROSITY**

15 40. Upon information and belief, Defendant has placed prerecorded calls to
16 telephone numbers belonging to thousands of consumers throughout the United
17 States without their consent. The members of the Class, therefore, are believed to
18 be so numerous that joinder of all members is impracticable.
19

20 41. The exact number and identities of the Class members are unknown at
21 this time and can only be ascertained through discovery. Identification of the Class
22 members is a matter capable of ministerial determination from Defendant's call
23 records.
24

25
26 ///

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28 ///

COMMON QUESTIONS OF LAW AND FACT

42. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are:

(1) Whether Defendant made non-emergency telemarketing calls that utilized a prerecorded or artificial voice to Plaintiff's and Class members' telephones;

(2) Whether Defendant can meet its burden of showing that it obtained consent to make such calls;

(3) Whether Defendant's conduct was knowing and willful;

(4) Whether Defendant is liable for damages, and the amount of such damages; and

(5) Whether Defendant should be enjoined from such conduct in the future.

43. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely transmits prerecorded messages to telephone numbers is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

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1 **TYPICALITY**

2 44. Plaintiff's claims are typical of the claims of the Class members, as they
3 are all based on the same factual and legal theories.

4 **ADEQUACY**

5 45. Plaintiff is a representative who will fully and adequately assert and
6 protect the interests of the Class, has no interests that are antagonistic to the interests
7 of the Class, and has retained competent counsel. Accordingly, Plaintiff is an
8 adequate representative and will fairly and adequately protect the interests of the
9 Class.

10 46. In addition, Plaintiff has retained counsel with substantial experience
11 in prosecuting complex litigation and class actions, including those involving
12 violations of the TCPA. Plaintiff and their counsel are committed to vigorously
13 prosecuting this action on behalf of the other respective members of the Class and
14 have the financial resources to do so.

15 47. Neither Plaintiff nor her counsel have any interests adverse to those of
16 the other members of the Class.

17 **PROCEEDING VIA CLASS ACTION IS SUPERIOR AND**

18 **ADVISABLE**

19 48. A class action is superior to all other available methods for the fair and
20 efficient adjudication of this lawsuit because individual litigation of the claims of all
21 members of the Class is economically unfeasible and procedurally impracticable.

1 While the aggregate damages sustained by the Class are in the millions of dollars,
 2 the individual damages incurred by each member of the Class resulting from
 3 Defendant's wrongful conduct are too small to warrant the expense of individual
 4 lawsuits. The likelihood of individual Class members prosecuting their own separate
 5 claims is remote, and, even if every member of the Class could afford individual
 6 litigation, the court system would be unduly burdened by individual litigation of
 7 such cases.
 8
 9

10 49. The prosecution of separate actions by members of the Class would
 11 create a risk of establishing inconsistent rulings and/or incompatible standards of
 12 conduct for Defendant. For example, one court might enjoin Defendant from
 13 performing the challenged acts, whereas another may not. Additionally, individual
 14 actions may be dispositive of the interests of the Class, although certain class
 15 members are not parties to such actions.
 16
 17

18 **COUNT I**

19 **VIOLATION OF 47 U.S.C. § 227(b) and 47 C.F.R. § 64.1200**

20 **(On Behalf of Plaintiff and the Prerecorded Message Class)**

21 50. Plaintiff re-alleges and incorporates the foregoing allegations as if fully
 22 set forth herein.
 23

24 51. It is a violation of the TCPA to make "any call (other than a call made
 25 for emergency purposes or made with the prior express consent of the called party)
 26 using any automatic telephone dialing system or an artificial or prerecorded voice
 27 ... to any telephone number assigned to a ... cellular telephone service" 47
 28

1 U.S.C. § 227(b)(1)(A)(iii).

2 52. It is also a violation of the TCPA regulations promulgated by the FCC
3 to "initiate any telephone call ... using an ... using an automatic telephone dialing
4 system or an artificial or prerecorded voice... To any telephone number assigned to
5 a paging service, cellular telephone service, specialized mobile radio service, or
6 other radio common carrier service, or any service for which the called party is
7 charged for the call." 47 C.F.R. § 64.1200(a)(1)(iii).
8
9

10 53. Defendant – or third parties directed by Defendant – cause the
11 transmission of telemarketing calls using an artificial or prerecorded voice to the
12 telephone numbers of Plaintiff and members of the putative class.
13

14 54. These calls were made without regard to whether or not Defendant had
15 first obtained the required consent from the called party to make such calls.
16

17 55. In fact, Defendant did not have prior express written consent it required
18 to call the telephones of Plaintiff and the other members of the putative Class with
19 artificial or prerecorded voice marketing messages when these messages were
20 transmitted.
21

22 56. Defendant has, therefore, violated § 227(b)(1)(A)(iii) of the TCPA by
23 using an artificial or prerecorded voice to make non-emergency telephone calls to
24 the telephones of Plaintiff and the other members of the putative Class without their
25 prior express consent.
26

27 ///
28

1 57. Defendant has also violated § 64.1200(a)(1)(iii) and § 64.1200(a)(3) by
2 using an artificial or prerecorded voice to make non-emergency telephone calls to
3 the telephones of Plaintiff and the other members of the putative Classes without
4 their prior express written consent.
5

6 58. As a result of Defendant's conduct and pursuant to § 227(b)(3) of the
7 TCPA, Plaintiff and the other members of the putative Class were harmed and are
8 each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and
9 the class are also entitled to an injunction against future calls. *Id.*
10

11 59. Because Defendant knew or should have known that Plaintiff and the
12 other members of the putative Class had not given prior express consent to receive
13 its prerecorded calls to their cellular telephones the Court should treble the amount
14 of statutory damages available to Plaintiff and the other members of the putative
15 Class pursuant to § 227(b)(3) of the TCPA.
16
17

18 COUNT II

19 Violations of 47 U.S.C. § 227 and 47 C.F.R. 64.1200(c)

20 (On Behalf of Plaintiff and the Do Not Call Class)

21 60. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-49
22 as if fully set forth herein.
23

24 61. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c),
25 provides that "[n]o person or entity shall initiate any telephone solicitation" to "[a]
26 residential telephone subscriber who has registered his or her telephone number on
27 the national do-not-call registry of persons who do not wish to receive telephone
28

1 solicitations that is maintained by the federal government.”

2 62. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) “are applicable to
3 any person or entity making telephone solicitations or telemarketing calls to wireless
4 telephone numbers.”

5
6 63. Pursuant to 47 U.S.C. § 227(c)(5) any “person who has received more
7 than one telephone call within any 12- month period by or on behalf of the same
8 entity in violation of the regulations prescribed under this subsection may” may
9 bring a private action based on a violation of said regulations, which were
10 promulgated to protect telephone subscribers’ privacy rights to avoid receiving
11 telephone solicitations to which they object. 47 U.S.C. § 227(c).
12
13

14 64. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to
15 be initiated, telephone solicitations to telephone subscribers such as Plaintiff and the
16 Do Not Call Registry Class members who registered their respective telephone
17 numbers on the National Do Not Call Registry, a listing of persons who do not wish
18 to receive telephone solicitations that is maintained by the federal government.
19
20

21 65. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do
22 Not Call Registry Class received more than one telephone call in a 12-month period
23 made by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described
24 above. As a result of Defendant’s conduct as alleged herein, Plaintiff and the Do Not
25 Call Registry Class are entitled, inter alia, to receive up to \$500 in damages for such
26 violations of 47 C.F.R. § 64.1200.
27
28

1 **(1) *Written policy.*** Persons or entities making calls for
2 telemarketing purposes must have a written policy,
3 available upon demand, for maintaining a do-not-call list.

4
5 **(2) *Training of personnel engaged in***
6 ***telemarketing.*** Personnel engaged in any aspect of
7 telemarketing must be informed and trained in the
8 existence and use of the do-not-call list.
9

10
11 70. Under 47 C.F.R § 64.1200(e), the rules set forth in 47 C.F.R. §
12 64.1200(d) are applicable to any person or entity making telephone solicitations or
13 telemarketing calls to wireless telephone numbers.

14
15 71. Plaintiff and the Internal Do Not Call Class members made requests to
16 Defendant not to receive calls from Defendant.

17
18 72. Defendant failed to honor Plaintiff and the Internal Do Not Call Class
19 members' opt-out requests.

20 73. Defendant's refusal to honor opt-out requests is indicative of
21 Defendant's failure to implement a written policy for maintaining a do-not-call list
22 and to train its personnel engaged in telemarketing on the existence and use of the
23 do-not-call-list.
24

25 74. Thus, Defendant has violated 47 C.F.R. § 64.1200(d).

26 75. Pursuant to section 227(c)(5) of the TCPA, Plaintiff and the Internal Do
27

28 ///

1 Not Call Class members are entitled to an award of \$500.00 in statutory damages,
2 for each and every negligent violation.

3 76. As a result of Defendant's knowing or willful conduct, Plaintiff and the
4 Internal Do Not Call Class members are entitled to an award of \$1,500.00 in
5 statutory damages per violation.
6

7 77. Plaintiff and the Internal Do Not Call Class members are also entitled
8 to and seek injunctive relief prohibiting Defendant's illegal conduct in the future,
9 pursuant to section 227(c)(5).
10

11 **COUNT IV**

12 **VIOLATIONS OF 47 U.S.C. § 227 and 47 C.F.R. § 64.1200(b)**

13 **(On Behalf of Plaintiff and the No Opt-Out Class)**

14 78. Plaintiff re-alleges and incorporates paragraphs 1-49 as if fully set forth
15 herein.
16

17 79. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(b)(3),
18 provides in pertinent part:
19

20 In every case where the artificial or prerecorded voice
21 telephone message includes or introduces an
22 advertisement or constitutes telemarketing and is
23 delivered to a residential telephone line or any of the lines
24 or telephone numbers described in paragraphs (a)(1)(i)
25 through (iii), provide an automated, interactive voice-
26 and/or key press-activated opt-out mechanism for the
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1 called person to make a do-not-call request, including brief
2 explanatory instructions on how to use such mechanism,
3 within two (2) seconds of providing the identification
4 information required in paragraph (b)(1) of this section.
5

6 80. Defendant violated 47 C.F.R. § 64.1200(b)(3) by delivering artificial or
7 prerecorded voice messages in connection with telemarketing calls to Plaintiff's
8 telephone number that did not provide an automated, interactive voice and/or key
9 press-activated opt-out mechanism for the called person to make a do not-call
10 request.
11

12 81. Plaintiff and the No Opt-Out Class members were harmed by
13 Defendant's refusal to provide an opt-out mechanism in that they were unable to
14 stop Defendant's prerecorded solicitations.
15

16 82. As a result of Defendant's conduct and pursuant to § 227(b)(3) of the
17 TCPA, Plaintiff and the other members of the putative Class were harmed and are
18 each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and
19 the class are also entitled to an injunction against future calls. *Id.*
20
21

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiff, individually and on behalf of the Classes, prays for
24 the following relief:
25

- 26 a) An order certifying this case as a class action on behalf of the Classes
27 as defined above, and appointing Plaintiff as the representative of the
28

Classes and Plaintiff's counsel as Class Counsel;

- b) An award of statutory damages for Plaintiff and each member of the Classes;
- c) An order declaring that Defendant's actions, as set out above, violate the TCPA and its implementing regulations;
- d) An injunction requiring Defendant to cease all unsolicited prerecorded calling activity, and to otherwise protect the interests of the Classes;
- e) An injunction prohibiting Defendant from using, or contracting the use of, prerecorded calls without obtaining, recipient's consent to receive calls made with such equipment;
- f) An injunction requiring Defendant to cease all prerecorded voice activity to individuals who have requested to be removed from Defendant's contact list;
- g) Such further and other relief as the Court deems necessary.

JURY DEMAND

Plaintiff and Class Members hereby demand a trial by jury.

DOCUMENT PRESERVATION DEMAND

Plaintiff demands that Defendants take affirmative steps to preserve all records, lists, electronic databases or other itemizations associated with the allegations herein, including all records, lists, electronic databases or other itemizations in the possession of any vendors, individuals, and/or companies

1 contracted, hired, or directed by Defendant to assist in sending the alleged
2 communications.

3
4 Respectfully submitted,

5 Dated: May 4, 2021

6
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